Supreme Court, U.S.
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No. 05- 50

In The

Supreme Court of the United States

MARIA ANNE KIRKMAN CAMPBELL,
a.k.a. Anne Kirkman Campbell,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER THE APPEAL WAIVER CLAUSE VIOLATES 18 U.S.C. § 3742(A)?

II. WHETHER THE RECORD REFLECTS THAT THE DEFENDANT WAIVED THE RIGHT TO APPEAL HER SENTENCE, RESTITUTION, AND FINE?

III. WHETHER THE PLEA AGREEMENT IS AMBIGUOUS AS TO WHETHER "SENTENCE" INCLUDES RESTITUTION?

IV. WHETHER THE DISTRICT COURT'S ENHANCEMENTS FOR THE UNDERLYING OFFENSE IN COUNT I UNDER 18 U.S.C. § 1341 VIOLATED THE SIXTH AMENDMENT BECAUSE THE ENHANCEMENTS RESTED ON FACT FINDINGS BY THE JUDGE INSTEAD OF THE JURY?

V. WHETHER THE DISTRICT COURT'S RESTITUTION ORDER, AS APPLIED TO THE DEFENDANT, IS UNCONSTITUTIONAL UNDER *APPRENDI*, *BLAKELY*, AND *BOOKER*?

VI. WHETHER THE DISTRICT COURT ERRED IN RELYING SOLELY UPON HEARSAY IN THIS CASE TO CALCULATE THE VICTIM'S LOSS FOR SENTENCING PURPOSES AND FOR RESTITUTION AND THE FINE?

VII. WHETHER THE DISTRICT COURT ERRED IN CALCULATING RESTITUTION?

VIII. WHETHER THE DISTRICT COURT ERRED IN CALCULATING THE ACTUAL LOSS?

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals is not reported. (App. 1). The court denied Dr. Campbell's motion for reconsideration; this order is not reported. (App. 6).

STATEMENT OF JURISDICTION

On April 6, 2005, the Eleventh Circuit held Campbell knowingly and voluntarily waived her right to appeal. The court granted the Government's motion to dismiss and did not address Campbell's sentencing claims. On May 11, 2005, the court denied Campbell's motion for reconsideration. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides: "(I)n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." The following statutory provisions are found in the appendix: 18 U.S.C. § 1341; 18

U.S.C. § 1342; 18 U.S.C. § 3663A; 18 U.S.C. § 3664; and 18 U.S.C. § 3742.

STATEMENT OF THE CASE

A. Nature of Case

Anne Campbell was named in a 21-count indictment that accused her of mail fraud and false statements in connection with a clinical study conducted to obtain FDA approval of Keteck, a drug manufactured by Aventis Pharmaceuticals Inc. (R1-1). Campbell pleaded guilty to one count. (R1-25). Campbell was sentenced to 56 months in prison and ordered to pay $1.5 million in fines and restitution for submitting false information in an antibiotic drug study. (R2-46).

B. Facts

Campbell's written plea agreement with the Government provided in part:

> I. *PLEA AGREEMENT*: The United States and the defendant hereby AGREE to the following:
>
> (a) *Plea*: The defendant will plead guilty to Count One of the Indictment.
>
> (b) *Understanding*: Pursuant to Rule 11(c)(1)(B), Fed. R. Crim. P., and upon the Court's acceptance of the aforesaid plea and entry of judgment on the same, the United States will do the following:
>
> (1) The government recommends that the defendant be given a three-level reduction for acceptance of responsibility. The government further recommends that the defendant be sentenced to the low

> end of the guidelines. The government further reserves the full right of allocution.
>
> * * *
>
> *WAIVER OF RIGHT TO APPEAL*
>
> Defendant's right to an appeal and her right to file a motion pursuant to 28 U.S.C. § 2255 have been explained to her and she understands those rights. As a part of this plea agreement, Defendant knowingly, intelligently, and voluntarily waives right to appeal conviction(s) and sentence, and to challenge conviction and sentence pursuant to 28 U.S.C. § 2255.

(R1-25). Before the District court accepted Campbell's plea, the court engaged in the following:

> THE COURT: The range of punishment which is available for that offense is as follows:
>
> You're subject to a fine of greater – of the greater of not more than $250,000 or two times the gross gain or loss in each count. You're subject to custody in prison time of not more than 5 years for each count and not more than 30 years as to each count if a financial institution was affected.
>
> There is no allegation of that; is that correct?
>
> MR. HENRY: No, sir.
>
> THE COURT: So you would be subject to not more than 5 years as to each count. You are pleading to one of those counts, so it would be 5 years. You would have a supervised release term of not more than 3 years, an assessment fee of $100, restitution will apply, and the United States sentencing guidelines apply as well.